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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments)

FM Broadcast Station)

(Chillicothe, Ohio and)

Ashville, Ohio))

MM Docket No. 99-_____

RM-_____

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

PETITION FOR RULE MAKING

Secret Communications II, L.L.C. ("Secret"), licensee of FM broadcast station WKKJ, Chillicothe, Ohio ("WKKJ"), by its attorneys, and pursuant to Sections 1.401(a), 1.420(i) and 73.202(b) of the Commission's Rules and Regulations, hereby petitions (this "Petition") the Commission to amend its FM Table of Allotments, Section 73.202(b) of the Commission's Rules, by reallocating Channel 227B from Chillicothe, Ohio to Ashville, Ohio and modifying WKKJ's license accordingly.

I. PRELIMINARY STATEMENT

Under Section 1.401 of the Commission's Rules, any interested party may petition the Commission to amend its rules or regulations. 47 C.F.R. § 1.401(a) (1997). By filing this Petition, Secret is requesting the Commission to amend its FM Table of Allotments with respect to the communities of Chillicothe and Ashville. 47 C.F.R. § 73.202(b) (1997). As shown below, because this proposal would result in a preferential new arrangement of allotments under the

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Commission's own guidelines, the public interest will be served by amending the FM Table of Allotments as requested herein, and by modifying the license for WKKJ accordingly.

II. ARGUMENT

A. Secret's Proposal Is Not Subject to Any Competing Expressions of Interest

This Petition is also being filed pursuant to Section 1.420(i) of the Commission's Rules which allows the FCC to modify a station's authorization to specify a new community of license, without affording other interested parties an opportunity to file competing expressions of interest, where, as here, the proposed allotment is mutually exclusive with the station's present assignment. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Modification Report and Order"). As demonstrated by the Engineering Exhibit attached hereto as Exhibit A, the requested reallocation of Channel 227B to Ashville, and the proposed modification of WKKJ's license, are mutually exclusive with WKKJ's newly authorized facilities. See FCC File No. BPH-981201IA, granted on March 5, 1999 and announced as granted in a Public Notice released March 10, 1999. Accordingly, the Commission may reallocate Channel 227B without granting an opportunity to other parties to file competing expressions of interest.

B. Secret's Proposal Meets the FCC's Separation Requirements

WKKJ is short spaced, on a grandfathered basis, with WAKW(FM), Cincinnati, Ohio. As shown in Exhibit A, however, no additional transmitter site relocation is being proposed by this Petition, as WKKJ provides full city-grade coverage to Ashville from its newly authorized transmitter site. The proposed reallocation will not affect any existing grandfathered short spacings, no new short spacings will be created, and there is no increase in the potential for interference between currently short-spaced stations. See Newnan and Peachtree, Georgia, 7

FCC Rcd 6307 (1992) (“Newnan”). In Newnan, the Commission held it will waive strict application of the short-spacing rules in reallocation proceedings, provided that no new short spacings are created, no existing short spacings are exacerbated, and the potential for interference between the currently short-spaced stations is not increased. Id. at 6307. In Newnan, because the petitioner met these conditions, and because the Commission recognized the public interest benefits associated with awarding a community its first local transmission service, the petitioner’s reallocation request was granted. Id.

Secret’s proposal is acceptable as it meets the spacing criteria set forth in Newnan. See Exhibit A. Because the public interest will be served by allowing Ashville to have its first local transmission service, the Commission should continue following the well-established precedent it set forth in Newnan and adopt Secret’s reallocation request.

C. Secret’s Proposal Meets the FCC’s Prerequisites and FM Allotment Priorities

The Commission has set forth two prerequisites before it will approve a “city of license change” request: (1) the former community shall not be deprived of its only existing local aural transmission service; and (2) the modification will result in a “preferential arrangement of allotments” under current FM allotment priorities. Modification Report and Order, 4 FCC Rcd at 4874. The Commission’s FM allotment priorities are, in descending order of importance: (1) provision for first full-time aural reception service; (2) provision for second full-time aural reception service; (3) provision for first local transmission service; and (4) provision for other public interest factors. Change of Community Report and Order, 4 FCC Rcd at 4873.

1. First Prerequisite: Reallocation of WKKJ Will Not Deprive Chillicothe, Ohio of its Only Existing Aural Broadcast Service

In addition to WKKJ, AM broadcast stations WCHI and WBEX, commercial FM broadcast station WFCB, and non-commercial FM broadcast stations WVXC, WOHC and

WOUH also have Chillicothe as their community of license. The Commission has held that for reallocation purposes, a non-commercial station constitutes a local aural transmission service.

See, e.g., Brunswick and Waycross, Georgia (1992); Valley Broadcasters, Inc., 5 FCC Rcd 2785 (1990). Therefore, this proposed allotment satisfies the first prerequisite as Chillicothe would continue to maintain an ample number of local transmission services.

2. Second Prerequisite: The Relocation of WKKJ to Ashville, Ohio Constitutes a Preferential New Arrangement of Allotments Under Established Commission Priorities

a. The First Two FM Allotment Priorities -- First and Second Full-Time Aural Reception Services -- are not Material

As shown in Exhibit A, Chillicothe will continue to be served by at least 15 full-time AM and FM broadcast reception services. Because no transmitter site relocation for WKKJ from its newly authorized site is proposed, Chillicothe will receive the same number of aural broadcast reception services after this proposal is granted. As Chillicothe receives at least six full-time aural broadcast reception services, it is considered to be well-served from a reception service standpoint. See Winner and Wessington Springs, South Dakota, 11 FCC Rcd 6663 (1996) (holding a community will be deemed to continue to be well-served as long as there are at least five aural broadcast reception services that exist in the community). Therefore, the first two allotment priorities set forth by the Commission are not material to a public interest determination in this proceeding.

b. The Third Allotment Priority, First Local Transmission Service, is Decisionally Favorable in this Proceeding

The Commission's third allotment priority is material and decisional in this case since Secret's proposal to change the city of license for WKKJ would provide Ashville with its first

local transmission service, while Chillicothe would continue to receive local transmission services from six other stations.

i. Ashville, Ohio is a "Community" Under the Commission's Allotment Criteria

Ashville exhibits all of the community indicia that the Commission has looked to in determining whether a community deserves to have its own first local broadcast service. See, e.g., Arcadia and Fort Meade, Florida, MM Docket No. 97-159 (Released July 18, 1997).

Ashville is recognized by the 1990 United States Census with a population of 2,254 people. The community has its own government, which is administered by an elected mayor and a six-member city council. In addition, Ashville has its own local zoning board, police department, and water and sewer departments. Ashville receives fire department service from the Harrison Township Fire Department, of which Ashville is the largest community. There are also two public elementary schools, a junior high school and a high school, which all are part of the Teays Valley School District. In addition, the administrative building for the School District is located in Ashville. The community has its own local zip code and local exchange prefix which South Bloomfield, Ohio, a small community (900 people) adjacent to Ashville, also uses. The Ashville community is diverse, served by several churches, commercial businesses, a community park, and various community organizations, including the Kiwanis, Teays Valley Civic Organization, the Knights of Pythias, the Knights of Pythias - Sisters, the Ashville Community Men's Club, the Ashville Civic Women's Club, the Louise Terrace Assisted Living Retirement Apartments and the Headstart Program. Ashville also holds an annual Fourth of July celebration and a Fall Hoedown every October.

As shown, because Ashville possesses the requisite "social, economic and cultural components that are commonly associated with community status," see Semora, North Carolina,

5 FCC Rcd 934 (1990), Ashville should be considered a “community” worthy of its own first local transmission service.

ii. WKKJ would not be Moving Into a New Urbanized Area

The change in WKKJ’s city of license to Ashville does not implicate the Commission’s Urbanized Area “presumption.” When an applicant proposes an FM allotment to a community based on a first local service preference, and that community is located in an Urbanized Area, or the 70 dBu contour of the station which is the subject of the rulemaking covers 50% or more of an Urbanized Area, a presumption of interdependence between the community and the Urbanized Area is created.¹ See Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). If the presumption of interdependence is not rebutted, the community is credited with all the local transmission services licensed to communities within the Urbanized Area. Id.

Exhibit A shows that neither Chillicothe nor Ashville is within any Urbanized Area, including the Columbus Urbanized Area (“Columbus Urbanized Area”). Moreover, the proposed allotment will not place a 70 dBu signal over 50% or more of the Columbus Urbanized Area. Thus, Ashville should not be credited with the aural broadcast transmission services licensed to the communities in the Columbus Urbanized Area, and properly deserves a first local service preference. In any event, Secret has already demonstrated Ashville’s independence. See Section C(2), supra.

¹The Census Bureau defines an Urbanized Area as consisting of a central community and adjacent densely settled areas that together have a minimum of 50,000 persons. See Section 307(b) Preferences Within Metropolitan Areas, 48 Fed. Reg. 19,428 (1983).

C. The Fourth Allotment Priority, the Public Interest Factor, is Served by the Proposed Move to Ashville

The Commission has already concluded that it is in the public interest to award a community its first local aural transmission service. See Newnan, 7 FCC Rcd at 6308. Thus, by allotting FM Channel 227B to Ashville, the public interest will be served by providing it with a locally based transmission service that otherwise does not exist. Because no transmitter site relocation is proposed, no loss area will result that would cause listeners to lose any broadcast reception services.

D. Secret's Declaration of Intent

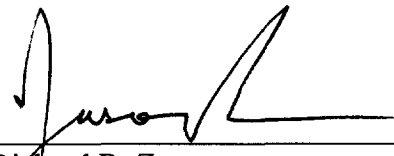
If Secret's proposal set forth herein is adopted, Secret intends to promptly file the appropriate application for Channel 227B at Ashville, Ohio. Since no other change in WKKJ's facilities is involved in this Petition, no separate commitment regarding construction is required.

III. CONCLUSION

Based on the foregoing, Secret Communications II, L.L.C. respectfully requests the Commission to promptly initiate the Rule Making requested herein to reallocate Channel 227B from Chillicothe, Ohio to Ashville, Ohio and to modify the license of radio station WKKJ(FM) accordingly.

Respectfully submitted,

SECRET COMMUNICATIONS II, L.L.C.

By: 
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Dated: April 26, 1999

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Secret Communications II, L.L.C.
Petition for Rule Making
Amendment of Section 73.202(b) Table of Allotments
WKKJ(FM), Chillicothe, Ohio
Exhibit A

ENGINEERING EXHIBIT

ENGINEERING EXHIBIT
IN SUPPORT OF PETITION FOR RULE MAKING
SECRET COMMUNICATIONS II, L.L.C.
STATION WKKJ(FM)
CHILLICOTHE, OHIO

CH 227B 43 KW (MAX-DA, H&V) 162 METERS

April 21, 1999

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**ENGINEERING EXHIBIT
IN SUPPORT OF PETITION FOR RULE MAKING
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ENGINEERING EXHIBIT
IN SUPPORT OF PETITION FOR RULE MAKING
SECRET COMMUNICATIONS II, L.L.C.
STATION WKKJ(FM)
CHILLICOTHE, OHIO
CH 227B 43 KW (MAX-DA, H&V) 162 METERS

ENGINEERING STATEMENT

INTRODUCTION

The Engineering Exhibit, of which this statement is part, was prepared on behalf of Secret Communications II, L.L.C. (Secret) in support of a Petition For Rule Making requesting amendment of the Federal Communications Commission (FCC) *Table of Allotments*, Section 73.202 of the FCC Rules, by reallocation of Channel 227B from Chillicothe, Ohio, to Ashville, Ohio, and concomitant modification of the license of commercial FM station WKKJ.

WKKJ FACILITIES

WKKJ is licensed (FCC File Number BLH-880405KA) to operate on channel 227B (93.3 megahertz (MHz)) with effective radiated power (ERP) of 50 kilowatts (kW), circularly polarized, and antenna radiation center height

above average terrain (HAAT) of 106 meters, at a site identified by geographic coordinates 39° 19' 52" North Latitude, 82° 59' 49" West Longitude, referenced to the 1927 North American Datum (NAD 27). WKKJ began operation in 1961.

WKKJ is authorized (FCC File Number BPH-981201IA) to operate on Channel 227B with maximum ERP of 43 kW, using a circularly polarized, directional antenna, and radiation center HAAT of 162 meters, at a site identified by geographic coordinates 39° 37' 17" North Latitude, 82° 53' 13" West Longitude (NAD 27). Pursuant to Section 73.211(b)(2) of the FCC Rules, the authorized WKKJ facilities are equivalent to maximum permissible Class B facilities.

Both the licensed and authorized WKKJ facilities are grandfathered short-spaced FM facilities, as defined in Section 73.213(a) of the FCC Rules, with respect to licensed co-channel commercial FM station WAKW, Cincinnati, Ohio. WAKW is licensed (FCC File Number BLH-891011KD) to operate on channel 227B with maximum ERP of 50 kW, horizontally polarized; 49 kW, vertically polarized; and antenna radiation center HAAT of 150 meters, at a site identified by geographic coordinates

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39° 12' 22" North Latitude, 84° 33' 23" West Longitude (NAD 27). WAKW began operation in 1961. The minimum distance separation required by Section 73.207 of the FCC Rules between co-channel Class B FM stations is 241 kilometers. The distance between the licensed WKKJ site and the licensed WAKW site is 135.3 kilometers. The distance between the authorized WKKJ site and the licensed WAKW site is 150.6 kilometers. Since both WAKW and WKKJ were authorized prior to November 16, 1964, and have remained continuously short-spaced since that time, WKKJ and WAKW are considered grandfathered short-spaced stations.

BASIS FOR PROPOSAL

Since WKKJ is a grandfathered short-spaced station, Secret's proposal to reallocate Channel 227B from Chillicothe, Ohio, to Ashville, Ohio, and modify WKKJ's license accordingly must meet several technical tests delineated in *Newnan and Peachtree, Georgia*, 7 FCC Rcd 6307 (1992).

Principal Community Coverage

Figure 1 of this Engineering Exhibit is a portion of the United States Geological Survey (USGS) Ohio 1:500,000 scale, state map upon which the predicted 70 dBμ (3.16 mV/m) field strength contour for the authorized

WKKJ facility is depicted. Also drawn on the map of Figure 1 is the US Census boundary for the city limits of Ashville, Ohio, which are clearly within the predicted authorized WKKJ 70 dB μ field strength contour.

Creation of New or Exacerbation of Existing Short Spacing

Since no change in the authorized WKKJ transmitter site is proposed in the instant petition, no new short spacings are created, no existing short spacings are exacerbated, and the potential for interference between the currently short-spaced stations is not increased.

Local Aural Broadcast Services

In addition to WKKJ, there are six fulltime aural broadcast services currently licensed to Chillicothe, Ohio:

- | | |
|--|---|
| 1. WCHI(AM), 1350 kHz
1.0 kW-LS, 0.028 kW-N, ND
39° 19' 39" NL; 82° 57' 03" WL | 4. WVXC(FM), Ch. 207A
2.50 kW (V), 107 m
39° 20' 45" NL; 83° 11' 15" WL |
| 2. WBEX(AM), 1490 kHz
1.0 kW-LS, ND
39° 19' 52" NL; 82° 59' 49" WL | 5. WOHC(FM), Ch. 211A
2.00 kW (V), 120 m
39° 20' 45" NL; 83° 11' 15" WL |
| 3. WFCB(FM), Ch. 232B1
25 kW (Max-DA,H&V), 81 m
39° 19' 52" NL; 82° 59' 49" WL | 6. WOUH(FM), Ch. 220A
0.75 kW (V), 198 m
39° 19' 46" NL; 82° 48' 08" WL |

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Station WKKJ(FM), Chillicothe, Ohio

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Other Aural Broadcast Services

Since no change in the authorized WKKJ facilities are proposed, WKKJ will continue to provide aural service to Chillicothe, Ohio. In addition to the adequate number of aural services that will remain in Chillicothe if channel 227B is reallocated to Ashville, Ohio, as proposed herein, at least eight other licensed facilities provide aural service to Chillicothe, Ohio:

- | | |
|---|---|
| 1. WXIZ(FM), Ch. 265A
Waverly, OH
0.92 kW (H&V), 152 m
39° 13' 17" NL; 82° 59' 33" WL | 5. WKRC(AM), 550 kHz
Cincinnati, OH
5.0 kW-LS, 1.0 kW-N, DA-2
39° 00' 29" NL; 84° 26' 39" WL |
| 2. WPAY-FM, Ch. 281C
Portsmouth, OH
100 kW (H&V), 305 m
38° 43' 20" NL; 83° 00' 05" WL | 6. WTVN(AM), 610 kHz
Columbus, OH
5.0 kW-U, DA-N
39° 52' 26" NL; 82° 58' 36" WL |
| 3. WXIC(AM), 660 kHz
Waverly, OH
1.0 kW-LS, ND
39° 07' 50" NL; 83° 00' 46" WL | 7. WOSU(AM), 820 kHz
Columbus, OH
5.0 kW-LS, 0.79 kW-N, DA-N
40° 01' 44" NL; 83° 03' 22" WL |
| 4. WCHO(AM), 1250 kHz
Washington Court House, OH
0.50 kW-LS, 0.042 kW-N, ND
39° 32' 59" NL; 83° 27' 10" WL | 8. WRFD(AM), 880 kHz
Columbus-Worthington, OH
23 kW-LS, 6.1 kW-CH, ND
39° 56' 31" NL; 83° 01' 20" WL |

Figure 2 of this Engineering Exhibit is a portion of the USGS Ohio 1:500,000 scale, state map upon which the predicted service contours for the licensed facilities specified above are depicted. Also drawn on the map of

Figure 2 is the US Census boundary for the city limits of Chillicothe, Ohio, which are clearly within the predicted service contours of the 15 licensed aural services facilities reported herein to provide aural service to Chillicothe, Ohio.

WKKJ COVERAGE IN COLUMBUS, OHIO, URBANIZED AREA

Drawn on the map of Figure 1 of this Engineering Exhibit, a portion of the USGS Ohio 1:500,000 scale, state map, is the 1990 US Census boundary of the Columbus, Ohio, Urbanized Area. Based on the data contained in the 1990 Ohio US Census of Population and Housing, 945,237 persons reside within the 898.8 square kilometers contained within the Columbus, Ohio, Urbanized Area boundary. Using a computer program that enumerates the population of those census divisions with centroids included within the specified contour or boundary, there are 78,029 persons, 8.3 per cent of the total population of the Columbus, Ohio, Urbanized Area, residing within the predicted authorized WKKJ 70 dB μ contour. Using a compensating polar planimeter in the prescribed manner on the original of Figure 1, and taking into account the appropriate map scale factor, there are 181.0 square kilometers, 20.3 per cent of the total area of the Columbus,

Ohio, Urbanized Area, within the predicted authorized WKKJ 70 dB μ contour.

CONCLUSIONS

The predicted authorized WKKJ 70 dB μ principal community contour encloses the proposed principal community of Ashville, Ohio. Because the already short-spaced, authorized WKKJ facilities will not be changed as a result of the proposed reallocation of Channel 227B to Ashville, Ohio, no new short spacings will be created, and the existing short spacing to station WAKW, Cincinnati, Ohio, will not be exacerbated. The city of Chillicothe, Ohio, will have six remaining full-time local aural services and will not be deprived of local aural transmission service. Chillicothe, Ohio, will continue to be well-served by at least 15 aural services. The area and population within the predicted authorized WKKJ 70 dB μ contour that is within the Columbus, Ohio, Urbanized Area comprises less than 50 percent of the total area and population of the urbanized area.

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Station WKKJ(FM), Chillicothe, Ohio

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CERTIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on April 21, 1999.

A handwritten signature in cursive script that reads "Robert G. Mallery". The signature is written in dark ink and is positioned above the printed name.

Robert G. Mallery

